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**IN THE
COURT OF APPEALS OF INDIANA**

QUENTIN COLE, JR.,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 49A02-0606-JV-511
)	
MARION COUNTY DEPARTMENT)	
OF CHILD SERVICES,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE MARION SUPERIOR COURT
JUVENILE DIVISION, ROOM 1
The Honorable Scott Stowers, Magistrate
Cause No. 49D09-0605-JC-18393

April 4, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Appellant, Quentin Cole, Jr., challenges the juvenile court's judgment declaring that his minor child, B.Mc., is a Child in Need of Services ("CHINS"). Upon appeal, Cole presents three issues for our review, which we consolidate and restate as whether there was sufficient evidence to support the juvenile court's CHINS determination.

We affirm.

On April 30, 2006, Bettina McCloud ("Mother") gave birth to B.Mc. After giving birth to B.Mc., Mother and B.Mc. testified positive for cocaine. Mother admitted to using cocaine as recently as April 25, 2006 and at least twice within the previous six years. Cole ("Father") admits that he is the biological father of B.Mc.¹ Mother and Father are not married.

After B.Mc. was born and tested cocaine positive, the Marion County Department of Child Services ("MCDCS")² was called to investigate. Father was not present at the hospital when the case manager came to assess the situation. The case manager attempted to contact Father at his mother's home, but was unsuccessful. Prior to the initial hearing, the case manager spoke only with Father's mother and sister; the case manager never personally spoke with Father.

¹ Because B.Mc. was a child born out of wedlock, Mother was the sole legal custodian of B.Mc. See Ind. Code § 31-14-13-1 (Burns Code Ed. Repl. 2003).

² Effective July 1, 2005, the powers, duties, and functions of the "division of family and children established by IC 12-13-1-1" were transferred to the "department of child services established by IC 31-33-1.5-2 as added by this act." P.L. 234-2005, Sec. 194. This provision was repealed by P.L. 145-2006, Sec. 376, but was effectively reenacted at the same time and is now found at Indiana Code §§ 31-25-2-1 and -7.

On May 4, 2006, the MCDCS requested and was granted permission to file a CHINS petition on behalf of B.Mc.³ As to Father, the CHINS petition alleged that Father had not established paternity for B.Mc. and that Father had not come forward to demonstrate to the MCDCS the ability or willingness to appropriately care for B.Mc. That same day, the court conducted an initial hearing on the CHINS petition, during which Father denied the allegations in the CHINS petition.⁴ A fact-finding/disposition hearing was then scheduled for May 30, 2006. At that hearing, the MCDCS asserted as the bases for the CHINS petition against Father a charge of neglect arising from the fact that Father was only the “alleged” father of B.Mc., as he had yet to establish paternity, and the fact that Father was not present at B.Mc.’s birth and had yet to contact the MCDCS regarding B.Mc.’s care. The MCDCS asserted that it is its policy to file a CHINS petition against “alleged” fathers.

At the conclusion of the MCDCS’s evidence, Father moved for judgment on the evidence, claiming that the MCDCS had failed to meet its burden to establish by a preponderance of the evidence that B.Mc. was a CHINS with respect to him. Father essentially argued that his status as an “alleged” father is not an act of neglect which

³ Mother has a second child, A.M., whose alleged biological father is someone other than Cole. The petition also alleged that A.M. was a CHINS. In this appeal, we are concerned only with the CHINS determination as between Cole and B.Mc.

⁴ The MCDCS also filed a CHINS petition against Mother on behalf of B.Mc. See Ind. Code § 31-34-1-10 (Burns Code Ed. Repl. 2003) (providing that a child is in need of services if the child is born with any amount of a controlled substance in the child’s body). Based upon the facts of B.Mc.’s testing cocaine positive at birth and Mother’s admission to using cocaine during the pregnancy, at the initial hearing, Mother admitted to the allegations in the CHINS petition as to her.

justified the filing of the CHINS petition.⁵ Aside from the fact that he has not executed a paternity affidavit or an action to establish paternity, Father claims that there was no other evidence presented by the MCDCS to substantiate any other acts of neglect on his part. The juvenile court denied Father's motion. The fact-finding hearing continued with Father testifying. Father affirmed that he was the biological father of B.Mc. but admitted that he had not executed a paternity affidavit or otherwise sought to establish paternity. Father also admitted that he was unemployed and that he used marijuana, although the frequency of such use was not established. In expressing his willingness and ability to care for B.Mc., Father explained that his sister would help him take care of B.Mc. until he could find a job.

At the conclusion of the hearing, the court, with respect to Father, found as follows:

"The Court's heard the evidence, considered the testimony of the witnesses. . . . It also appears to be uncontraverted [sic] that [Father] was not around when the child was born. Uh is not working uh and uses drugs, although this is not a criminal case, I fail to see how he's able to demonstrate an ability to parent this child. Properly therefore I am going to find the CHINS petition as to [F]ather."⁶ Transcript at 35.

The court proceeded with disposition, ordering Father to complete a parenting assessment and a drug and alcohol assessment, cooperate by giving random urine screens, and follow

⁵ Throughout his brief, Father refers to the "filing" of the CHINS petition as being erroneous. We note that there is nothing in the record which suggests that at the time the petition was filed Father had admitted that he was B.Mc.'s biological father. From the record, it appears that Father's admission was made during the initial hearing on the CHINS petition. Thus, at the time the CHINS petition was filed, Father was only the "alleged" father of B.Mc.

⁶ Apparently in light of Father's admission during the hearing that he is the biological father of B.Mc., the juvenile court treated Father as such even though paternity had yet to be conclusively established pursuant to the means set forth in Indiana Code § 31-14-2-1 (Burns Code Ed. Repl. 2003).

through with home-based counseling. Father was also ordered to establish paternity. Thereafter, the juvenile court issued a written order finding B.Mc. to be a CHINS as relating to Father. In its order, the juvenile court did not include factual findings so much as it simply recited the statutory requirements for a CHINS determination. Father filed his notice of appeal from the CHINS determination on June 16, 2006.

Upon appeal, Father argues that he is not a proper respondent in a CHINS proceeding because there is no evidence that he separately caused or contributed to the neglect of B.Mc. Father maintains that Mother's misconduct, i.e. cocaine use during pregnancy, cannot be attributed to him. In this same vein, Father asserts that the MCDCS policy to name an alleged father as a respondent in a CHINS proceeding against the mother essentially holds the alleged father responsible for the actions or inactions of the mother. Father argues that by imputing Mother's neglectful and abusive conduct to him so as to establish a basis for a CHINS petition, the MCDCS has violated his rights under the Equal Protection Clause. Father maintains that the proof to find a parent a necessary respondent in a CHINS proceeding should be determined as to each individual parent.

Father's arguments in this regard, however, start from the presumption that Mother's conduct was attributed to him for purposes of filing the CHINS petition and as support for the CHINS determination. In fact, such is not the case. There is nothing in the record which suggests that the MCDCS or the juvenile court relied upon or even considered Mother's misconduct as a basis for filing the CHINS petition against Father or for finding B.Mc. to be a CHINS with respect to Father. At the time the CHINS petition was filed, Father had yet to admit to being the biological father of B.Mc. and had not

contacted the MCDCS to express a willingness or ability to care for B.Mc. after efforts had been made to contact him. The CHINS petition filed against Father contained these allegations and made no mention of Mother's drug use in establishing a basis for the CHINS petition as against Father. In finding B.Mc. to be a CHINS with respect to Father, the court did not mention Mother's misconduct but focused only upon conduct attributable to Father. Thus, to the extent Father's claims are based upon the erroneous assumption that Mother's conduct was attributed to him, Father's claims fail. Father's claims that he is not a proper respondent in the CHINS proceedings and thus should not be required to participate in services essentially boil down to a sufficiency-of-the-evidence argument.

When we review the sufficiency of evidence, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. In re A.H., 751 N.E.2d 690, 695 (Ind. Ct. App. 2001), trans. denied. We neither reweigh the evidence nor reassess the credibility of witnesses. Id. The MCDCS was required to prove by a preponderance of the evidence that B.Mc. was a CHINS as defined in Indiana Code §§ 31-34-1-1 and 2. See id.; Ind. Code § 31-34-12-3 (Burns Code Ed. Repl. 2003).

Under Indiana law:

“A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.” Ind. Code § 31-34-1-1 (Burns Code Ed. Supp. 2006).

Here, although Father admitted that he was B.Mc.’s biological Father, Father had yet to take the necessary steps to establish paternity of B.Mc.⁷ Additionally, Father waited until the fact-finding hearing to express his willingness and ability to care for B.Mc. Belying Father’s assertions that he was willing and able to care for B.Mc., however, was Father’s own testimony that he was not employed and that he used marijuana. Although Father claimed that his sister would help him care for B.Mc. until such time as he found a job, there is no evidence in the record supporting Father’s claim. Focusing upon the fact that Father had yet to establish paternity, that he was unemployed, and that he admitted to using marijuana, the juvenile court determined that Father did not have the present ability to appropriately care for B.Mc. From our review of the record, we cannot say that the juvenile court erred in determining that B.Mc. was a CHINS with respect to Father.

We further reject Father’s argument that he was denied due process of law because the juvenile court failed to enter specific findings of fact and conclusions of law. When we review a case in which a juvenile court has entered findings, we will not set aside the judgment of the juvenile court unless it is clearly erroneous. In re J.Q., 836 N.E.2d 961, 966 (Ind. Ct. App. 2005), reh’g denied. A juvenile court’s findings and judgment are considered to be clearly erroneous only if a review of the whole record leads us to a definite and firm conviction that a mistake has been made. Id. In reviewing findings

⁷ Paternity may only be established by one of two methods: (1) in a paternity action under Indiana Code 31-14 or (2) by executing a paternity affidavit pursuant to the requirements of Indiana Code § 16-37-2-2.1. See I.C. § 31-14-2-1.

made by the juvenile court, we neither reweigh the evidence nor judge the credibility of witnesses. Id. Instead, we consider only the evidence and reasonable inferences drawn therefrom which support the judgment. Id.

In its dispositional order, the juvenile court made the following general findings in determining B.Mc. to be a CHINS:

“ The Court having heard the statements and considered the file and facts in this matter, now finds the child[] to be in need of services. The Court finds by preponderance of the evidence by trial that the child[] [is] in need of services.

The Court finds that reasonable efforts have been offered and available to prevent or eliminate the need for removal from the home. After reviewing the reports and information from the Office of Family and Children, service providers and other sources, which the Court now incorporates into this order (see Court file), the Court also finds that the services offered and available have either not been effective or been completed that would allow the return home of the child[] without Court intervention.

The Court finds that it is contrary to the health and welfare of the child[] to be returned home and that reasonable efforts have been made to finalize a permanency plan for the child[.]” Appendix at 17.

We have before acknowledged that Indiana Code § 31-34-19-10(a)(5) (Burns Code Ed. Supp. 2006) requires that the juvenile court give reasons for its disposition in a CHINS proceeding. J.Q., 836 N.E.2d at 966-67. In J.Q., this court’s review of a CHINS determination was hindered by the juvenile court’s use of vague language in its findings of fact. We noted that the record yielded evidence which could support either outcome, but reiterated that a reviewing court is in no position to reweigh evidence. Id. at 966. Upon remanding to the juvenile court to follow more specifically the requirements of I.C. § 31-34-19-10, we emphasized the need for a juvenile court to make clear findings of fact and suggested that the failure to make such findings created potential procedural due

process problems for any subsequent termination proceedings. 836 N.E.2d at 966-67 (citing A.P. v. Porter County Office of Family & Children, 734 N.E.2d 1107, 1112-13 (Ind. Ct. App. 2000), trans. denied).

In the present case the juvenile court's findings in its order declaring B.Mc. to be a CHINS are very similar and in places identical to the language used by the juvenile court to support its adjudication of J.Q. as a CHINS.⁸ Unlike J.Q., however, our review has not been hindered by the lack of specific findings of fact and conclusions of law as the evidence presented to the court is undisputed and adequately supports the juvenile court's determination that B.Mc. is a CHINS with respect to Father. The facts of this case were simple and straightforward and set out fully in the transcript of the initial and fact-finding hearings. Moreover, at the fact-finding hearing, the court clearly stated its findings and conclusions which were based upon and supported by the evidence before the court. Specifically, following testimony from the case manager assigned to B.Mc. and Father's own testimony, the juvenile court found as follows:

“The Court's heard the evidence, considered the testimony of the witnesses. . . . It also appears to be uncontraverted [sic] that [Father] was not around when the child was born. Uh is not working uh and uses drugs, although this is not a criminal case, I fail to see how he's able to demonstrate an ability to parent this child. Properly therefore I am going to find the CHINS petition as to [F]ather.” Transcript at 35.

While the use of vague boilerplate language has been frowned upon, we cannot say that in the present case such amounts to a denial of Father's due process rights. The trial court's specific findings and conclusion made during the dispositional hearing are

⁸ We note that the findings in this case were made by the same magistrate who entered the findings in J.Q.

supported by the evidence and sufficient to establish by a preponderance of the evidence that B.Mc. is a CHINS with respect to Father. We therefore cannot say that the juvenile court's findings and conclusion that B.Mc. is a CHINS are clearly erroneous.

To the extent Father suggests that the juvenile court improperly shifted the burden of proof to him, we disagree. As evidenced by the juvenile court's denial of Father's motion for judgment on the evidence following the MCDCS's presentation of its evidence, the juvenile court determined that the MCDCS met its burden of establishing by a preponderance of the evidence that B.Mc. was a CHINS based upon the fact that Father, although admitting he is the biological father of B.Mc. at the initial hearing, had not taken steps to conclusively establish paternity of B.Mc. and the fact that Father was not present for B.Mc.'s birth. In this regard, Father's actions spoke louder than his words. Such facts support the MCDCS's position that Father was not willing or able to provide B.Mc. with appropriate care. In its final determination, the court buttressed its conclusion that the MCDCS had met its burden of establishing that B.Mc. was a CHINS by noting the fact that Father was unemployed and that he used marijuana, facts which were admitted by Father as he attempted to demonstrate for the court that he was willing and able to provide appropriate care for B.Mc. After reviewing the record, we cannot say that the juvenile court erroneously shifted the burden to Father.

The judgment of the juvenile court is affirmed.

SHARPNACK, J., and CRONE, J., concur.